

Chronology

On **3 December 2014**, Mr C, a technically qualified member of the Boards of Appeal of the European Patent Office (EPO), was physically removed from the Isar Building by members of the Investigative Unit. Mr C was handed a letter informing him that he was subject to a "house ban" blocking his access to EPO premises, documents and resources, and that his User ID would also be blocked. The Investigative Unit is a unit operating directly under the responsibility of the President of the EPO, at that time Mr Battistelli.

On the **same day** the Investigative Unit took possession of Mr C's office computer and the contents of his office and sealed his office. Also on **3 December 2014** the President announced to the EPO staff ("Communiqué No. 64") that he had imposed a house ban on a member of a Board of Appeal pending an investigation of alleged misconduct.

On **11 December 2014** the Administrative Council of the European Patent Organisation, on a proposal from the President, suspended Mr C on full salary until 31 March 2015 and decided that the Investigative Unit should pursue an investigation into this matter and deliver its report to the Administrative Council and the President (CA/D 12/14). These decisions were recorded in document CA/92/14.

On **5 March 2015** the Investigative Unit delivered its report to the Administrative Council and the President.

On **26 March 2015** the Administrative Council initiated a disciplinary procedure against Mr C and to that effect set up a Disciplinary Committee to consider the report of the Investigative Unit. The Administrative Council also decided to maintain the suspension of Mr C "until the end of the disciplinary procedure". These decisions were recorded in document CA/28/15.

On **23 June 2015** the Disciplinary Committee delivered its own report to the Chairman of the Administrative Council, at that time Mr Kongstad.

On **25 June 2015** the Chairman of the Administrative Council requested the Enlarged Board of Appeal to propose the removal of Mr C from office under Article 23(1), first sentence, EPC.

In its decision [G 2301/15](#) of **17 September 2015** the Enlarged Board of Appeal found that this request was inadmissible because it failed to fulfil the formal requirements of factual substantiation prescribed by Article 12a(5) RPEBA, and proposed the reimbursement of all costs incurred by the respondent (Mr C) in the proceedings before the Enlarged Board. This proposal was not followed by the EPO. Shortly after being published on the EPO website, decision **G 2301/15** was removed from public access by the EPO.

On **15 October 2015** the Administrative Council decided (decision CA/D 14/15) on a proposal from the President (CA/C 19/15) to further maintain the suspension of Mr C while reducing his salary by half until a final decision had been made in his case, referring to Article 95 of the Service Regulations.

On **26 October 2015** the Chairman of the Administrative Council made a second request to the Enlarged Board of Appeal to propose the removal of Mr C from office.

At its meeting on **17 December 2015**, the Administrative Council adopted decision CA/D 18/15 amending, on a proposal from the President, Article 95(3) of the Service Regulations, in order to extend the period for which a member of the Boards of Appeal could be suspended on reduced or no remuneration before a final decision was delivered in the relevant proceedings from previously four months to twenty-four months, to be further extended in exceptional cases. It was specified that this decision had immediate effect and included suspensions decided under Article 95 of the Service Regulations and which were ongoing on the date of entry into force.

On **11 January 2016** the Chairman of the Administrative Council made a third request to the Enlarged Board of Appeal to propose the removal of Mr C from office.

On **11 February 2016** at the oral proceedings in case [G 2302/15](#), the Chairman of the Administrative Council withdrew the second request to propose the removal of Mr C from office. The Enlarged Board of Appeal issued decision **G 2302/15** terminating the case dealing with the second request. The Enlarged Board ordered that the decision be published and proposed the reimbursement of all costs incurred by the respondent (Mr C) in the proceedings before the Enlarged Board. This proposal was not followed by the EPO. The decision was not published by the EPO.

On **14 June 2016**, the Enlarged Board of Appeal announced its decision in case [G 2301/16](#) (dealing with the third request of 11 January 2016). *“For the Enlarged Board to be able to continue with these proceedings the position of the Petitioner [Administrative Council] would have to be that it did not agree with the Office President and acknowledged that, from an institutional point of view, the pressure exercised by the Office President in the present case was incompatible with the judicial independence of the Enlarged Board guaranteed by the EPC. As the Petitioner [Administrative Council] did not clearly distance itself from the Office President’s position, there is the threat of disciplinary measures against the members of the Enlarged Board. It is then the Enlarged Board’s judicial independence in deciding on this case which is fundamentally denied.”* (see decision **G 2301/16**).

Preceding was a letter and a position paper sent by the President of the Office to the Enlarged Board, in reaction to the Enlarged Board’s order that the oral proceedings on the merits of the case would be held in public, as requested by Mr C. The document contained the following passages: *“”21. It is quite inappropriate that a full re-hearing of the facts take place on 14-16 June; there are no vires in this forum to conduct an appeal process nor indeed to recommence an investigation; accordingly, the personal presence of any witnesses from the Office will not be required or authorised by the President.” “23. With that in mind, the President will not [...] hesitate to take any appropriate steps available to him to ensure the orderly running of the Office [...]” “27. In view, in particular, of the gravity of the reputational, security, welfare and public order risks identified, there is a strong case for saying that any decision to conduct this hearing in public would be unlawful because it could not be defended as either proportionate or reasonable.” “28. For all these reasons, the President deems it necessary in the interests of the whole Organisation that there is an assurance that this matter will proceed in camera and that no witnesses will be called from the Office.”* (see Decision **G 2301/16**, point XXVI.) The Enlarged Board asked the Administrative Council as appointing authority for both, the Enlarged Board and the

President of the Office, to consider the situation but the AC, in the opinion of the Enlarged Board, did not clearly distance itself from the Office President's position. Accordingly, the Enlarged Board decided to make no proposal to the Administrative Council that Mr C be removed from office. The Enlarged Board ordered that the decision in case **G 2301/16** be published and proposed the reimbursement of all costs incurred by the respondent (Mr C) in the proceedings before the Enlarged Board. This proposal was not followed by the EPO. The decision was not published by the EPO.

In **June 2016**, the President of the EPO and Mr Topić, the Vice President DG4, brought criminal charges with the public prosecutions office in order to initiate criminal proceedings in Germany against Mr C. The complaint was subsequently rejected for formal reasons of not having been filed in due time.

In **March 2017**, the President of the EPO and the Vice President DG4 initiated a private action for insult and defamation before the criminal court in Germany against Mr C.

On **20 June 2017**, the Local Court (**Amtsgericht München; file no. 1122 Bs 4/17**) rejected the action because it had not been submitted in due time.

On **3 July 2017**, the President of the EPO and the Vice President DG4 filed an appeal against that decision.

On **6 November 2017**, the Regional Court of Munich (**Landgericht München I, file no. 24 Qs 18/17**) rejected the appeal, confirming the finding of the first instance of the action having been not been filed in due time. In addition, the Regional Court held that a further prerequisite for initiating a private action was not met and that there was no reasonable suspicion of Mr C having committed the alleged criminal offences.

On **6 December 2017**, the **Administrative Tribunal of the International Labour Organisation**, in judgments [3958](#) and [3960](#) set aside the decisions of the Administrative Council to impose and prolong the suspension of Mr C. The Tribunal further ordered his immediate reinstatement in his former post and awarded reimbursement of legal costs as well as material and moral damages. The Tribunal held that the President of the EPO had involved himself in the decision to suspend Mr C in spite of a conflict of interest in the matter.

On **11 December 2017** the President of the Boards of Appeal, Mr Josefsson, reinstated Mr C as a member of the Boards of Appeal, ending his suspension and house ban.

On **31 December 2017**, Mr C's five-year term of office as a member of the Boards of Appeal ended. The Administrative Council did not reappoint Mr C as a member of the Boards of Appeal.

On **1 June 2018**, Mr Battistelli ceased to be President of the EPO and was succeeded by Mr Campinos.

Later that year, the EPO published the Enlarged Board of Appeal decisions **G 2301/15**, **G 2302/15** and **G 2301/16**.

Further reference in the public domain can be found at

[https://en.wikipedia.org/wiki/Art. 23 1/15, Art. 23 2/15 and Art. 23 1/16](https://en.wikipedia.org/wiki/Art._23_1/15,_Art._23_2/15_and_Art._23_1/16)